UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON DIVISION

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DISTRICT COURT DISTRICT OF SOUTH CAROLINA GREENVILLE, SC

William James Roush, Jr., Plaintiff, vs. Duke Energy Corporation, Defendant.	C.A. NO.: 8-05-927-13

COMPLAINT
(Jury Trial Demanded)

The Plaintiff would respectfully show:

GENERAL ALLEGATIONS

1. That Plaintiff is a citizen and resident of the State of Florida.

2. That Defendant Duke Energy Corporation is a North Carolina corporation doing business in South Carolina, and maintaining offices and industrial facilities in South Carolina

3. That Defendant owns and operates an industrial facility in Oconee County, South Carolina, known as Oconee Nuclear Station.

4. That the acts and delicts referenced herein occurred at Defendant's Oconee Nuclear Station in Oconee County, South Carolina.

5. That this Court has jurisdiction of this case pursuant to 28 U.S.C. §1332, based upon diversity of citizenship.

6. That the amount in controversy herein, exclusive of interest and costs, exceeds the

sum of seventy-five thousand ($75,000.00) Dollars.

FACTUAL BACKGROUND

7. That at all time referenced herein Plaintiff was an employee of J.T.V. Incorporated, a Florida corporation (hereinafter "J.T.V."). J.T.V. entered into a contract in 2002 with T.B.E. Group, Inc. (hereinafter "T.B.E.") to perform certain services and labor at the Oconee Nuclear Station, owned and operated by Defendant Duke Energy Corporation (hereinafter "Duke"). T.B.E. also had a contract with Duke to provide certain services for Duke at Oconee Nuclear Station. J.T.V.'s contract with T.B.E. was expressly authorized, ratified, and approved by Duke. The scope of work being performed by J.T.V. included refurbishing and re-lining approximately 1,000 feet of pipe at the Duke Energy Station. J.T.V. is a specialty company which refurbishes and re-lines existing, underground pipe, and its employees, to perform such work, and associated work within the underground pipe, and are thereby exposed to whatever substances are in the pipe.

8. That in August of 2002 J.T.V. and its employees commenced work at the Oconee Nuclear Station, including the above-described work.

9. That it was necessary, for purposes of human health, for J.T.V. and its employees to be fully informed of the substances to which they would be exposed, so that proper protective procedures and gear could be utilized.

10. That at no time before or during the work performed by J.T.V. and Plaintiff at Oconee Nuclear Station was J.T.V. or Plaintiff ever informed that hazardous, toxic, chemical, or harmful substances would be located in said pipe. To the contrary, agents and employees of Defendant Duke continuously represented to J.T.V. and its employees that this was a "storm

pipe," through which "storm water" was discharged, and that nothing of a hazardous, toxic, chemical or harmful nature would be present in the pipe. Said representations were false.

11. That, had Defendant disclosed to J.T.V. and/or Plaintiff that hazardous, toxic, chemical, or harmful substances would be located in said pipe, appropriate protective procedures and gear would, by necessity, have been utilized. In such event, use of such protective procedures and gear would have significantly altered the scope of work to be performed, and would have resulted in significantly higher cost to the Defendant.

12. That J.T.V. and its employees regularly engaged in safety and informational meetings with agents and representatives of Defendant, yet Defendant never disclosed that hazardous, toxic, chemical, and/or harmful substances would be discharged into said pipe, thereby exposing J.T.V.'s employees, including Plaintiff to such.

13. That Defendant had a duty to prevent hazardous, toxic, chemical, and harmful substances from entering and/or being present in said pipe while J.T.V. employees worked therein. Defendant breached said duty.

14. That Defendant had a duty to inform J.T.V. and its employees, including Plaintiff, that hazardous, toxic, chemical, and harmful substances would be released into said pipe and/or would be present in said pipe. Defendant breached said duty.

15. That Defendant knew or should have known that hazardous, toxic, chemical and/or harmful substances would be located in said pipe.

16. That Defendant had a pecuniary interest in making false statements to J.T.V. and Plaintiff since additional protective gear and procedures were necessary to protect against such hazards and dangers, which would have resulted in additional cost to Defendant.

17. That Defendant knew or should have known that its representations concerning lack of hazardous, toxic, chemical and/or harmful substances were false.

18. That, rather than incur the additional cost associated with additional protective gear and procedures, Defendant chose to expose J.T.V.'s employees including Plaintiff, to these hazards and dangers.

19. That Defendant owed a duty of care to see that truthful information was communicated to J.T.V. and Plaintiff. Defendant breached said duty.

20. That Defendant owned, operated, and controlled Oconee Nuclear Station, and the pipe to which J.T.V.'s employees were exposed, and the surrounding grounds. Defendant had a duty to properly investigate and discover risks, hazards, and dangers of its premises to which J.T.V. and Plaintiff would be exposed. Defendant breached said duty.

21. That in breaching all of the aforementioned duties, Defendant failed to exercise due care.

22. That J.T.V. and Plaintiff justifiably relied upon the representations of Defendant.

23. That as a proximate result of their reliance upon Defendant's representations, Plaintiff was seriously injured.

24. That Defendant, when it made representations to J.T.V., knew and intended that J.T.V. and its employees, including Plaintiff, as a limited group, would rely upon said representations for benefit and guidance in performing the work on Defendant's pipe.

25. That Defendant made such representations to J.T.V. and Plaintiff, intending that such representations would influence the business transactions between Defendant and J.T.V., and knowing that such representations would influence the level of protective gear and

procedures to be utilized in the work on said pipe.

26. That, unbeknownst to J.T.V. and Plaintiff at the time, hazardous, toxic, chemical and harmful substances were discharged and released into said pipe, by Defendant Duke, and were present in said pipe while J.T.V.'s employees worked therein.

27. That Plaintiff through crawling and working in said pipe, became saturated on many occasions with said substances from said pipe, and was thereby exposed dangerously to such.

28. That due to said exposures to said hazardous, toxic, chemical, and harmful substances, Plaintiff became extremely ill.

29. That as a result of said exposures Plaintiff was damaged and injured and will in the future continue to be damaged and injured as follows:

(a) In experiencing severe sickness, illness, pain, suffering, malaise, and fatigue;

(b) In having to pay large sums for medical bills and treatment;

(c) In losing wages and earnings;

(d) In experiencing disability;

(e) In experiencing disfigurement;

(f) In experiencing mental distress;

(g) In experiencing loss of quality of life.

30. That the acts and delicts of the Defendant were the sole and proximate cause of the damages and injuries suffered by Plaintiff.

31. That, as a result of said exposures, nearly 100% of J.T.V.'s work crew present at the Oconee Nuclear Station site, including Plaintiff, became seriously ill in November and

December of 2002. As a further result, 50% of J.T.V.'s work crew required surgery to remove their gall bladders. Also, an employee of T.B.E. who worked in close proximity to J.T.V.'s crew required gall bladder removal as a result of said exposure.

AS A FIRST CAUSE OF ACTION
Negligence, Recklessness, Gross Negligence, Carelessness, Wanton and Willful Conduct

32. That the acts and delicts of Defendant were negligent, reckless, grossly negligent, careless, wanton and willful as follows:

(a) In failing to inform Plaintiff of the likelihood that hazardous, toxic, chemical, and/or harmful substances would be discharged, released, and/or present in the pipe in which J.T.V. and it employees were working;

(b) In informing Plaintiff and J.T.V. that there were no hazardous, toxic, chemical, and/or harmful substances released, discharged, or located in said pipe, which representations were false.

(c) In failing to inform Plaintiff and J.T.V. of the hazards and dangers in said pipe, which information would have necessitated substantially greater protective gear and equipment for said employees, including Plaintiff (which would have resulted in greater financial cost to Defendant for the scope of work);

(d) In withholding from Plaintiff and J.T.V. vital and crucial information concerning the hazardous, toxic, chemical, and/or harmful substances likely to be located in said pipe, for the purpose of reducing Defendant's financial costs;

(e) In exposing the J.T.V. work crew, including Plaintiff, to the hazardous, toxic, chemical, and/or harmful substances located in the pipe, for the purpose of reducing Defendant's financial costs;

(f) Despite daily "safety" and informational meetings conducted by Defendant with J.T.V's. work crew, in failing and refusing to disclose to J.T.V. and Plaintiff the true dangers and hazards located in said pipe;

(g) In discharging and releasing, hazardous substances at various times, and allowing such to be located in said pipe during the time that the J.T.V. crew worked therein, thereby exposing Plaintiff to same;

(h) In negligently hiring, training, retaining, supervising, and informing agents and employees of the Defendant company;

(i) In failing to properly investigate and discover the risks, hazards, and dangers present on its premises, to which Plaintiff would be exposed, or in willfully ignoring such;

(j) In failing to properly ascertain that it was providing accurate and truthful information to J.T.V. and Plaintiff regarding said risks, hazards, and dangers, or in willfully providing such misinformation; and

(k) In failing to prevent such hazardous, toxic, chemical, and/or harmful substances from entering said pipe and being present while J.T.V.'s employees would be exposed, particularly after representing that such substances would not be present.

33. That the aforesaid acts and delicts of Defendant are the sole and proximate cause of the damages and injuries sustained by Plaintiff.

34. That Plaintiff is entitled to Judgment against Defendant for actual and punitive

damages, in amounts to be determined by this Court.

Wherefore, Plaintiff prays for Judgment against the Defendant for actual damages and for punitive damages both to be determined by this Court, for the costs of this action, and for such other and further relief to this Court may deem just and proper.

Gary W. Poliakoff (Fed. ID No. 3078)
Raymond P. Mullman, Jr. (Fed. ID No. 6768)
Poliakoff & Associates, P.A.
Post Office Box 1571
Spartanburg, South Carolina 29304
(864) 582-5472/Telephone
(864) 582-7280/Facsimile
atty@gpoliakoff.com /Poliakoff email
Rmullmanjr@aol.com / Mullman email

Patrick Dekle
808 Landmark Building
412 Madison Street
Tampa, Florida 33602-4640
(813) 223-2300/Telephone
(813) 223-2659/Facsimile
pdekle@deklelaw.com / email

Attorneys for Plaintiff

Dated: March 24, 2005

Spartanburg, South Carolina

Plaintiff requests a trial by jury.

Gary W. Poliakoff
Attorney for Plaintiff